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HIGH COURT OF CHHATTISGARH: BILASPUR
(Division Bench)

CORAM: Hon'ble Shri Vijay Kumar Shrivastava &
Hon'ble Shri Dhirendra Mishra, JJ.

CRIMINAL APPEAL NO.429 of 2000

Appellants : 1) Aghan Sai, S/o. Dhondho, aged 50 years

2) Ilias, S/o Aghan Sai, aged 23 years

Both are R/o Village - Tolma, PS Lailoonga.

Vs.

Respondent: The State of Chhattisgarh

PRESENT:

Shri Abhay Tiwari, counsel for the appellants.

Shri D.K. Gwalre, Deputy Govt. Advocate for the State/respondent.

J U D G M E N T

(Dated 28th March 2006)

Per Vijay Kumar Shrivastava, J.

This appeal has been directed against the judgment of conviction and order of sentence dated 7-12-1999 passed by the First Additional Sessions Judge, Raigarh, in Sessions Trial No.154/98 whereby both the appellants have been held guilty for committing murder of Punia Ram punishable under Section 302 of the I.P.C. and both of them have been sentenced to undergo imprisonment for life.

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2) Appellant No.1 & 2 are father and son. Deceased Punia Ram was nephew of appellant No.1 and cousin of appellant No.2. An umbrella belonging to Punia Ram was missing, therefore, he enquired from appellant No.1 Aghan Sai who denied. On 16-6-1998 when it was raining, Punia Ram saw his uncle Aghan Sai covering his head under an umbrella that belongs to him. Therefore, he enquired again from Aghan Sai about his umbrella. Aghan Sai took deceased Punia Ram to his house so as to return his umbrella, where instead of returning the umbrella, he assaulted Punia Ram with a heavy wooden stick. His son Ilias also joined him, and assaulted Punia Ram with a bamboo stick. Wife of the deceased Firomani Bai (PW-1) saw that both the appellants beating her husband, therefore, she rushed-up to the place of occurrence and attempted to rescue him. She was also beaten by the appellants. Both the appellants leaving the deceased lying in pool of blood fled away from the scene of occurrence. Firomani brought her husband to her house who succumbed to the injuries sustained by him. Firomani appraised the incident to Patel and her neighbourers.

3) Firomani gave merg intimation and F.I.R. in Police Station: Lailoonga. Inquest report was prepared and the dead body of Punia Ram was sent to Community Health Centre, Lailoonga for autopsy. Dr. R.S. Upadhyay described all the injuries in his report and was of the opinion that the death was due to coma as a result of head injury. The nature of death was homicidal. On the memorandum of both the appellants, bamboo stick and wooden Geda were recovered and seized. One lungi from appellant No.1 and

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another from appellant No.2 were also seized. Chemical examiner, on examination found blood over all these articles. From the place of occurrence, plain and control earth were also seized. Spot map was prepared. Statements of witnesses under Section 161 of the Cr.P.C. were recorded. After completion of investigation, challan under Section 302 read with Section 34 of the IPC was led against both the appellants in the Court of Judicial Magistrate, First Class, Gharghoda who committed the case to the Court of Sessions for trial.

4) Charges under Section 302 of the IPC and in the alternative, under Section 302 read with Section 34 of the IPC were framed against both the appellants and the same were read over and explained to them who abjured their guilt and claimed that they have been falsely implicated.

5) After close scrutiny of the evidence, learned trial Court held that both the appellants are authors of the crime, they intentionally killed Punia Ram and therefore, held both the appellants guilty for committing the offence of murder and accordingly convicted and sentenced both of them as aforementioned.

6) Punia Ram received multiple injuries on his body and his death was homicidal in nature. This fact has not been disputed by counsel for the appellants. Even otherwise, from the evidence of RS Upadhyay (PW-9) and his autopsy report (Ex.P/15), it is evident that following injuries were caused to the deceased :

1) Lacerated wound in the size of 7 cm. x 2 cm. x *scalp deep margins ragged irregular and stained with blood; right parietal occipital region.*

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Fracture of parietal & occipital bone.

2) Lacerated wound in the size of 9 cm. x 2 cm. x scalp deep margins stained with blood situated over left temporal parietal bone; fracture of temporal bone on left side.

3) Bruise with abrasion in the size of 10 cm. x 8 cm. over right lower 1/3 leg. Fracture of right Tibia fibula at its lower 1/3.

4) Bruise with abrasion in the size of 12 cm. x 6 cm. over left lower 1/3 leg. Fracture of left Tibia fibula at its lower 1/3.

From the oral evidence of RS Upadhyay (PW-9) and from his report (Ex.P/15), it is established that Punia Ram died of coma, which caused as a result of head injuries and the death was homicidal in nature.

7) Learned trial Court relying on the statement of eyewitness Firomani (PW-1) duly supported by other sources, held both the appellants responsible for the injuries found on the body of Punia Ram and also held responsible for his death. Firomani in her evidence deposed that Ilias assaulted the deceased with "Thenga" whereas Aghan assaulted the deceased with bamboo stick on his head. They also inflicted number of blows over the body of Punia Ram. When she came to rescue her husband, she also received injuries. She brought Punia Ram to her house and appraised the incident to Patel and other villagers and thereafter lodged the report. Dr S Upadhyay (PW-8), who examined Firomani has deposed that on examination, one abrasion measuring 0.5 x 0.5 cm was found on her right wrist joint. From the evidence of Bandheram (PW-2), Patel (PW-3) and Soma

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(PW-4) it is also evident that soon after the incident, they came to know that Punia Ram has been killed by the appellants.

8) In cross-examination of Firomani (PW-1), nothing has been brought so as to discredit her evidence. She is wife of the deceased and she has no grudge to falsely implicate both the appellants. She witnessed the crime; and her evidence also finds support from the medical evidence and other sources as indicated above.

9) Learned counsel for the appellants contended that non-examination of Investigating Officer vitiates the trail; therefore, the appellants are entitled for the benefit which resulted as a result of non-examination of the Investigating Officer. In the instant case, Firomani, wife of the deceased witnessed the crime. Her statement is completely reliable which also finds support by other evidence. Nothing has been brought to suggest that appellants have been prejudiced for want of examination of Investigating Officer Therefore, in the instant case, non-examination of the Investigating Officer was not fatal.

10) Learned counsel for the appellants relying on judgment rendered in ***Radhey Shyam Vs State of UP*** reported in ***1998 (8) Supreme 118 Supreme Court of India*** contended that both the appellants are guilty for lesser offence and lesser sentence on the score that there is no evidence to establish who wielded fatal injury on the head of Punia Ram. Hon'ble the Supreme Court in judgment rendered in the matter of Radhey Shyam (supra) held that the appellant exceeded his private defence but there was no evidence that he inflicted fatal blow; therefore, on these circumstances held

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that the appellant is guilty for lesser offence. In the instant case, appellants had not assaulted Punia Ram exercising their right of private defence of person or property. Even otherwise, from the medical evidence, it is clear that on the head two injuries have been inflicted and from the evidence of Firomani (PW-1) it is also established that Aghan Sai inflicted injury by bamboo stick over the head of Punia Ram and appellant No.2 Ilias Sai wielded injury over head of Punia Rm by Thenga (a thick wooden stick). Therefore, they cannot be held guilty for committing any lesser offence.

11) From the evidence of Dr RS Upadhyay (PW-9) and his report (Ex.P/15), it is evident that the injuries caused over head of Punia Ram were fatal. Four injuries were found on his body; two injuries were found on the head; one below right ear and another below left temporal parietal bone. The nature of injuries, part of the body over which injuries have been inflicted and the wooden and bamboo stick used by the appellants clearly establish that they intentionally assaulted Punia Ram to cause his death.

12) In the light of above evidence and discussions, the judgment of conviction and order of sentence passed by the trial Court does not suffer from any infirmity which may require interference by this Court. Therefore, we are of the considered opinion that both the appellants are guilty for committing offence of murder of Punia Ram punishable under Section 302 of the IPC. Learned Court below correctly convicted and sentenced both the appellants.

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13) In the result, the appeal is devoid of merit and hence it is dismissed.

Sd/-
V.K. Shrivatava
Judge

Sd/-
Dhirendra Mishra
Judge

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